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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 161

ARTHUR CULOMBE,

Petitioner

— versus —

STATE OF CONNECTICUT,

Respondent

MOTION OF CONNECTICUT ASSOCIATION FOR RETARDED CHILDREN FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

BRIEF OF CONNECTICUT ASSOCIATION FOR RETARDED CHILDREN AS AMICUS CURIAE.

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The Connecticut Association for Retarded Children, Inc. respectfully moves this Court for leave to file the accompanying Brief in this case as **amicus curiae.**

The consent of the Attorney for the Petitioner herein has been obtained, but the Attorney for the Respondent herein has refused to consent to the filing of a Brief of the Connecticut Association for Retarded Children, Inc. as **amicus curiae.**

The applicant, The Connecticut Association for Retarded Children, Inc., has an interest in this case in that the Petitioner, Arthur Culombe, now under death sentence by the Courts of the State of Con-

necticut, is a mental defective with mental age nine to nine and one-half years and with an intelligence quotient of 60.

The **amicus curiae,** as an Association dedicated to the help of the retarded and the improvement of their adjustment to society, is vitally concerned with the administration of criminal justice as regards those persons who, although with the chronological age and the appearance of adults, have the reasoning faculties and intellectual capacities of young children.

The decision of the Court in this case is of vital interest and concern to the estimated 2% of our total population that is classified as mentally retarded and therefore the **amicus curiae,** Connecticut Association for Retarded Children, files this brief.

The Brief of the Petitioner herein does not comprehend or include sufficient argument pertaining to the Petitioner's peculiar status as a mental retardate and the Applicant has no reason to believe that this argument on this point will be expanded or made more complete. The peculiar status of the Petitioner as a mental retardate may well be determinative of the issues in this case.

WHEREFORE, your Petitioner respectfully requests leave to file a Brief as **amicus curiae.**

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Counsel for Connecticut Association for Retarded Children, as **Amicus Curiae.**

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ARGUMENT.

The use of the involuntary confession in criminal proceedings has been repugnant to civilized democratic society for as long as democratic society itself has existed. The involuntary confession has always been recognized as a potential instrument of tyranny and a device whereby the interests of justice are subverted.

This Court recently stated:

> "As important as it is that persons who have committed crimes be convicted, there are considerations which transcend the question of

guilt or innocence. Thus in cases involving involuntary confessions this Court enforces a strongly felt attitude of our society that important human values are sacrificed where an agency of the Government, in the course of securing a conviction, wrings a confession out of an accused against his will."

Blackburn v. Alabama, 361 U.S. 199.

The basic sense of justice of our contemporary civilization must necessarily be affronted by the spectacle of the conviction and incarceration or execution of a human being upon the basis of a confession, which, because of the circumstances under which it was made, was not a product of free will and therefore probably lacking in accuracy and truthfulness.

Convictions after confessions made where there was substantial question as to whether or not they constituted the free and truthful expression of an accused have been consistently reversed by this Court. **Payne v. Arkansas,** 356 U.S. 560; **Fikes v. Alabama,** 352 U.S. 191; **Chambers v. Florida,** 309 U.S. 227; **Blackburn v. Alabama,** 361 U.S. 199.

The examination of the facts and circumstances surrounding any so called confession must always be made and viewed in the light of the facts concerning the Petitioner's mentality, his experience, and his familiarity with the ways and standards of contemporary society. **Fikes v. Alabama,** 352 U.S. 191.

This Court has stated:

> "The limits (of interrogation) in any case depend upon a weighing of the circumstances of pressure against the power of resistance of the person confessing. What would be overpowering to the weak of will or mind might be utterly ineffective against an experienced criminal."
>
> **Stein v. People of New York,** 346 U.S. 156, 184.

In determining whether or not a confession taken was in violation of due process, we must consider and examine carefully the mental capacity of the person from whom the confession is taken to determine whether the pressures to which he was subjected, although perhaps reasonable in the case of the normal individual, would be so overpowering in the case of the weak minded person as to induce from him a confession that was unreliable.

Our laws relating to criminal responsibility have developed having regard to the generally accepted intellectual abilities and comprehension of the normal adult. We have developed different standards of responsibility and punishment for those members of society who are immature and without the intellect and powers of reason generally associated with the mature human being. The differentiation in application of standards is made almost exclusively on the basis of chronological age and is manifested by the treatment given the juvenile offender.

Similarly, legal protections for the individual in our democratic society have evolved in the light of those qualities of reasoning, understanding and comprehension that are generally considered normal for the mature adult. In the case of a mental retardate, lacking the equipment of the normal individual, the standards are inapplicable and the protections often inadequate.

Perhaps, as society develops a fuller understanding of the nature of mental retardation, it will also develop a peculiar system of laws to deal with persons with this abnormality. Until such time, however, criminal proceedings involving retarded persons should be carefully scrutinized to assure that their constitutional protections are preserved, their rights protected and the highest standard of criminal justice applied.

Arthur Culombe, the Petitioner in this case, was at the time of the commission of the crime alleged 33 years old chronologically but had a mental age of nine to nine and one-half and an intelligence quotient of 60 (T1180, 1289).* He was either a moron (T1182, 1187, 1283) or an imbecile (T1219). He was unable to read or write (T1181). He was easily suggestible and easily influenced (T1189, 1308-9) and acted purely under stress as to reasoning power (T1182). He left school at 16 after having spent six years in a third grade class for slow

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*(The parenthetical numbers prefaced by the letter "T" refer to the pages of the certified, three-volume transcript of the trial court proceeding entitled, "Joint Appendix of Appellants and Appellees.")

learners (T1168, 1193-4). After leaving school, he spent some time at State institutions for the retarded (T1172, 1199, 1218-20, 1223-24).

It is clear from the record that Arthur Culombe, although 33 years of age at the time of the commission of these crimes and in appearance a mature adult was, intellectually, a child.

Arthur Culombe was no more familiar with the specific provisions of the law of which he had a right to avail himself than a nine year old child would be and the whole concept of justice and legal protection was totally alien to him. In his dealings with officers of the law he was further handicapped by a severe inability to comprehend his rights and the courses of action open to him even if these rights had been spelled out for him in the clearest and simplest of terms. The nine year old mind, whether contained in the body of a nine year old child or a grown man, is not capable of comprehending, let alone availing itself of, the principles of and processes which have been developed for the purpose of protecting and restraining men who have reached the age of reason, an age which Arthur Culombe will never reach.

The petitioner, as a person mentally unequipped to understand legal rights and processes stated in even the most elementary terms, was far less able than a normal adult, to contend with any of the devices an officer of the law would use to persuade or coerce him into admitting acts in which he may or may not have taken part. He was incapable of stating precisely the nature of his participation in

such acts and was certainly unable to comprehend the severity of the consequences of a general admission. The confessions which he signed were in fact written by the police.

We must consider also the emotional condition of a mental retardate faced by interrogators. The mentally defective person, placed in a situation which he has never known, is frustrated, confused and distressed. His already severely limited powers of comprehension and reasoning are further reduced. His life molded in a pattern of inferiority and submissiveness to those who are stronger and cleverer, he cowers in the face of the all powerful authority that confronts him. Total bewilderment overcomes him, and he is completely incapable of dealing with the situation into which he has been thrust. His only desire is to please those with whom he is dealing. If a confession will satisfy his interrogators he is delighted to give it as a means of achieving acceptance and receiving approval. His immature mind is not concerned with the truth of the confession and easily ignores, if aware of them at all, the inevitable consequences.

This is true whether or not the atmosphere created is one of threats and coercion or one of congeniality created in an effort to inspire confidence and to induce a quick admission of guilt. In the latter instance the nine year old mind is no less handicapped in its dealings with the law. A mentality at this level is unable to discriminate between appearances and fact. The intellectual child, a phrase which accurately describes Culombe, is completely trusting because he has not learned the full meaning of in-

sincerity and guile. He is easily influenced and readily suggestible. He quickly succumbs to those whom he believes he has reason to trust. If he questions or protests that which he believes to be wrong or untruthful, his objections are easily overcome by more intellectually adept persons employing genuine and spurious reasoning or stating an actual fact, distortions of the truth, or utter falsehoods. If this mental defective is counselled by an officer of the law to make a certain admission or pursue a certain course of action, he has no basis in knowledge or experience upon which to reject this counsel. Nor does he have a basis for concluding that warnings or threats of the consequences of his failure to confess or to co-operate are unfounded or exaggerated. Whatever means are employed by authorities to deal with him, the nine year old mentality in a grown man is as helpless before the law as the nine year old mentality in a child. An admission of crime by a mental defective, unprotected and unadvised by counsel, can only be viewed in the same light as a similar admission by a child.

It is incumbent on criminal authorities, in the administration of justice to take every precaution to assure that the circumstances under which a confession is elicited are such that, having regard to the particular individual, it is likely to be both a free and voluntary expression and an accurate statement of the facts.

In the case of a mental retardate the criminal authorities must be held to scrupulously high standards in interrogation; perhaps the same standards that would be employed in the interrogation of a

child with, chronological age equivalent to the retardate's mental age.

The failure to adhere to such standards must necessarily result in a compromise of the rights of the individual involved and, as a necessary consequence an erosion of the rights essential to the preservation of free democratic society.

CONCLUSION.

The manner in which the confessions were elicited from the petitioner in this case were such that the Court could easily determine that they were not voluntary confessions even had the petitioner been a normal adult. The use of these confessions at the trial of the petitioner, taken as they were from a mental retardate under circumstances involving coercion, deceit, misrepresentation, and lack of counsel offends the civilized standards of the Anglo-American world and is violative of the due process clause of the Fourteenth Amendment to the Constitution.

The conviction in this case should be reversed.

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